

PATENT

Serial No. 09/743,883; Filing Date January 16, 2001

Examiner Charesse L. Evans; Art Unit 1615

Attorney Docket No. von Kreis.011

III Remarks

A. Applicant's Response Regarding Allowable Subject Matter

The Examiner stated on page 4 of the Action that Claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

New claim 46 is based on claim 30 with certain clarifications to ensure that the claim is supported by the Application. By way of background, claim 30 was dependent upon claim 24, which recited mixtures (a) and (b). Those mixtures are referenced in claim 46 as mixtures (A) and (B). The limitation under subparagraph (A) as to specific lipophilic alcoholic generally recognized as safe flavoring agents in claim 24 has been incorporated within the text of mixture(A), as subparagraph (A) of claim 24 related to mixture (A). Subparagraph (A) cannot relate to mixture (B). According to the Application at page 4, lines 21–23, *mixture (B) contains no other "GRAS" ("generally recognized as safe") flavored alcohols* (aside from butyl alcohols and polyphenols (*emphasis added*)). This statement in the Application that the paragraph (B) mixture containing the additional provision "the mixture containing no other GRAS flavored alcohols," has been inserted in claim 46. The new claims 46–68 are supported by the Application and canceled claims as indicated in the chart below:

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New Claim No.	Where Support is found in the Application
Claim 46	Canceled Claims 24 and 30; Application at page 4, lines 14–23; and page 7, lines 1–5.
Claim 47	Canceled Claim 45.
Claim 48	Canceled Claim 26.
Claim 49	Canceled Claim 26.
Claim 50	Canceled Claim 27.
Claim 51	Canceled Claim 27.
Claim 52	Canceled Claim 28.
Claim 53	Canceled Claim 29.
Claim 54	Canceled Claim 31.
Claim 55	Canceled Claim 31.
Claim 56	Canceled Claim 32.
Claim 57	Canceled Claim 32.
Claim 58	Canceled Claim 33.
Claim 59	Canceled Claim 34; and Application at page 10, lines 21–28.
Claim 60	Canceled Claim 36.
Claim 61	Canceled Claim 37.
Claim 62	Canceled Claim 38.
Claim 63	Canceled Claim 45.
Claim 64	Canceled Claims 24 and 30; Application at page 4, lines 14–23; page 6, lines 18–20; and page 7, lines 1–5.
Claim 65	Canceled Claim 35; Application at Invention Example 25; and page 9, lines 6–18.
Claim 66	Canceled Claim 45.
Claim 67	Canceled Claims 24 and 30; Application at page 4, lines 14–23; page 6, lines 18–20; and page 7, lines 1–5.
Claim 68	Canceled Claim 35; Application at Invention Example 25; and page 9, lines 6–18.

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Applicant has canceled claims 1, 24–38 and 45, which were addressed in the Office Action. New claim 46 is, with the modifications referenced hereabove, similar to claim 30, rewritten as an independent claim. As noted above, the Examiner has indicated that claim 30, if rewritten in independent form, would be allowable. Accordingly, Applicant believes that new claim 46 should be allowable because claim 46 is claim 30 rewritten in independent form with clarifications to make claim 46 consistent with the Application.

Claims 47–63 are claims that are dependent either directly upon claim 46 or upon a claim that is dependent upon claim 46. Accordingly, these claims should be allowable if claim 46 is allowable.

Claim 64 is an independent claim similar to claim 46, except that in Mixture (A), the hydrophilic non-alcoholic, generally recognized as safe flavoring agent is lactic acid. Accordingly, as claim 64 covers subject matter entirely within the scope claimed by claim 46, it should be allowable if claim 46 is allowable. Claims 65 and 66 are dependent upon claim 64 and therefore are allowable if claim 64 is allowable. Claim 67 is similar to claim 46, except that in Mixture (B) at least one hydrophilic non-alcoholic generally recognized as safe flavoring agent is lactic acid. Accordingly, as claim 67 covers subject matter entirely within the scope of claim 46, claim 67 should be allowable if claim 46 is allowable. Claim 68 is dependent upon claim 67, and therefore is allowable if claim 67 is allowable.

Accordingly, as claim 46 is based upon claim 30, which was indicated by the Examiner to be allowable if rewritten in independent form and claims 47–68 are within the scope of claim 46, the Examiner's rejection of claims 1 and 38 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention, is overcome by claims 46–68. Similarly, the Examiner's rejection of claims 1, 24–38 and 45 under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 4,446,161 to Friedman et al., in view of United States Patent No. 4,927,651 to Kumini et al., is overcome by new claims 46–48.

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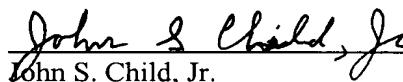
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IV Conclusion

It is believed that the above Amendment and Remarks constitute a complete Response under 37 C.F.R. § 1.111 and that all bases of rejection in the Examiner's Action have been adequately rebutted or overcome. A Notice of Allowance in the next Examiner's Action is therefore requested. The Examiner is requested to telephone the undersigned counsel if any matter that can be expected to be resolved in a telephone interview is believed to impede the allowance of the pending claims of Application Serial No. 09/743,883.

Respectfully submitted,

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PTO Registration No. 28,833

Date: January 25, 2004

Enclosures: Certificate of Mailing Under 37 C.F.R. § 1.8(a)

Petition For Extension of Time Under 37 C.F.R. § 1.136(a)
Authorization To Charge Deposit Account (original and 1 copy)
for the amount of \$55.00 for the Petition Fee (small entity rate)

Fee Transmittal for F/Y 2004 (original and 1 copy)

Applicant's Response To United States Patent and Trademark Office
Examiner's Action Under 37 C.F.R. § 1.111

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